

TITLE 18. FRANCHISE TAX BOARD

As required by Section 11346.4 of the Government Code, this is notice that a public hearing has been scheduled to be held at 10:00 a.m., on June 30, 2000, in Room 1040 at 9645 Butterfield Way, Sacramento, California, to consider the adoption of Sections 17267.2-1 and 24356.7-1 in Title 18 of the California Code of Regulations pertaining to the recapture of deductions for qualified property previously used in an enterprise zone. The hearing will be conducted by an employee of the Franchise Tax Board and a report will be submitted to the three-member Franchise Tax Board for its consideration. Government Code Section 15702(b) provides for consideration by the three-member Board of any proposed regulatory action if any person makes such a request. If a request is received, a hearing will be held by the three-member Board. Interested persons are invited to present comments, written or oral, concerning the proposed regulatory action. It is requested, but not required, that persons who make oral comments at the hearing also submit a written copy of their comments at the hearing.

WRITTEN COMMENT PERIOD:

Written comments will be accepted until 5:00 p.m., June 30, 2000. All relevant matters presented will be considered before the proposed regulatory action is taken. Comments should be submitted to the agency officer named below.

AUTHORITY & REFERENCE:

Section 19503 of the Revenue and Taxation Code authorizes the Franchise Tax Board to prescribe regulations necessary for the enforcement of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), Part 10.7 (commencing with Section 21001) and Part 11 (commencing with Section 23001) of the Revenue and Taxation Code. The proposed regulatory action interprets, implements, and makes specific Sections 17267.2 and 24356.7 of the Revenue and Taxation Code.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW:

Sections 17267.2 and 24356.7 of the Revenue and Taxation Code provide authority for taxpayers to claim a business expense deduction for forty per cent of the cost of certain depreciable qualified property for use in enterprise zones within California.

If a taxpayer elects to expense forty per cent of the cost of the qualified asset, the basis of the asset is reduced by the amount of the expense deduction. The taxpayer is required to use the asset exclusively in the enterprise zone for a certain time period to avoid recapture of the business expense deduction. If the taxpayer fails to use, or disposes of the asset, prior to the expiration of the close of the second year after the property is placed in service, the previous expense deduction must be added back to income in the year of disposition or nonuse.

These proposed regulations would provide specific regulatory authority to increase the depreciable basis of qualified property upon which a taxpayer had elected to expense forty per cent of the cost in the year in which such property is placed in service by the amount required to be included in such taxpayer's gross income as a result of the occurrence of a recapture event.

The regulation will provide clarity and eliminate ambiguity as to the correct treatment of the recaptured costs and their impact on the asset's basis.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed under Part 7, commencing with Government Code Section 17500, of Division 4: None.

Other non-discretionary cost or savings imposed upon local agencies: None.

Cost or savings in federal funding to the state: None.

Significant adverse economic impact on business including the ability of California businesses to compete with businesses in other states: None.

Potential cost impact on private persons or businesses directly affected: None

Significant effect on the creation or elimination of jobs in the state: None.

Significant effect on the creation of new businesses or elimination of existing businesses within the state: None.

Significant effect on the expansion of businesses currently doing business within the state: None.

Effect on small business: The regulation affects small businesses in the same manner as it affects individuals and other businesses.

The Franchise Tax Board has determined that it is not feasible to draft the text of the proposed regulations in plain English due to the technical nature of the regulations. However, a non-controlling plain English summary of the text of the proposed regulations is available from the agency contact person named in this notice.

Significant effect on housing costs: None.

CONSIDERATION OF ALTERNATIVES:

In accordance with Government Code Section 11346.5(a)(12), the Board must determine that no alternative considered by it would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS:

An initial statement of reasons has been prepared setting forth the facts upon which the proposed regulatory action is based. The statement includes the specific purpose of the proposed regulatory action and the factual basis for determining that the proposed regulatory action is necessary.

The express terms of the proposed text of the regulation and the initial statement of reasons and the rulemaking file are prepared and available upon request from the agency contact person named in this notice.

CHANGE OR MODIFICATION OF ACTIONS:

The proposed regulatory action may be adopted by the three-member Franchise Tax Board after consideration of any comments received during the comment period.

The regulations may also be adopted with modifications if the changes are nonsubstantive, or the resulting regulations are sufficiently related to the text made available to the public so that the public was adequately placed on notice that the regulation as modified could result from that originally proposed. The text of the regulations as modified will be made available to the public at least 15 days prior to the date on which the regulation is adopted. Requests for copies of any modified regulations should be sent to the attention of the agency officer named below.

ADDITIONAL COMMENTS:

If you plan on attending or making an oral presentation at the regulation hearing, please contact the agency officer named below.

The hearing room is accessible to persons with physical disabilities. Any person planning to attend the hearing who is in need of a language interpreter, including sign language, should contact the officer named below at least two weeks prior to the hearing so that the services of an interpreter may be arranged.

CONTACT:

All inquiries concerning this notice or the hearing should be directed to Colleen Berwick at the Franchise Tax Board Legal Branch, P.O. Box 1720, Rancho Cordova, CA 95741-1720; Tel.: (916) 845-3306; Fax: (916) 845-3648; E-Mail: colleen_berwick@ftb.ca.gov. The regulation and initial statement of reasons are also available at the Franchise Tax Board's web site at www.ftb.ca.gov.